



EMPLOYMENT TRIBUNALS

Claimant: Miss Sabina Gajdosova

Respondent: O My Chai Ltd

Heard at: Birmingham (by CVP video hearing) **On:** 4 August 2022

Before: Employment Judge Hena

Representation

Claimant: Miss S Gajdosova in Person

Respondent: None Attendance

JUDGMENT

The Tribunal's findings in respect of this claim are:

1. That the respondent has had sufficient notice of this claim pursuant to rule 47 of the Employment Tribunals Regulation 2013 the Tribunal can proceed in absence of a Party.
2. The respondent made unauthorised deductions from the claimant's wages by failing to pay wages from 6 December 2021 – 03 January 2022 totalling £1,134 gross this is based on the claimant working 126 hours at £9.00 per hour. The

respondent is ordered to pay this sum with necessary deductions for tax and NI made.

3. The respondent is ordered to pay the additional compensation of £756, two weeks pay, based on the claimant's ET1 of 42 hours worked a week at £9.00 pursuant to section 38 of the Employment Act 2002, for failure to provide the claimant with a written statement of employment particulars.

REASONS

Rule 47 of the ETR 2013

4. The respondent failed to engage with proceedings despite the Tribunal contacting him with details of the claim and reminders. The respondent confirmed his business address by email to the claimant on 12 January 2022, the Tribunal has used this address and it appears the business is still active from this address.
5. The respondent failed to file an ET3 in response to the claim nor did he provide any contact details to the Tribunal. On the morning of the hearing the claimant provided the last contact number she had for the respondent; she had last spoken to the respondent in January 2022 on this number. The Tribunal adjourned and attempted to contact him twice on the number given, to give him the opportunity to join the proceedings. There was no response to our calls.
6. The Tribunal was satisfied that the respondent understood that the hearing was on 4 August 2022 given the written correspondence to them. The Tribunal continued the hearing in the respondent's absence pursuant to rule 47 of the ETR 2013.

Claims and Issues

7. The claims identified in this matter for the Tribunal to determine on were as follows:
 - 7.1 Did the respondent make unauthorised deductions by withholding wages after the claimant left their employment?
 - 7.2 If yes, how much wages does the respondent owe the claimant?
 - 7.3 Was the claimant provided with a written statement of employment particulars (employment contract)? If not, should the Tribunal award additional compensation of 2 or 4 weeks' pay under section 38 Employment Act 2002?

Procedure, Documents and Evidence Heard

8. The claimant submitted evidence in support of her claim which included;
 - ET1 of the claimant
 - Email exchange between the respondent dated 12 January 2022 in which she asked for her unpaid wages and the respondent advised her to put her request in writing and he legally had 26 days to respond.
 - Two wage slips from the respondent dated 5 November 2021 for the gross pay of £1,512 and 5 December 2021 for the gross pay of £2,907
 - The claimant's HSBC bank statement which shows the respondent paying the claimant sum of £519 under the business name of Ministry of Chai ON 8 December 2021 only.
 - NHS track and trace notification informing the claimant she must isolate until 29 December 2021.
 - Whatsapp exchange between the owner of O My Chai Ltd, Kamal Hussain, where it was indicated he did not want the claimant to inform NHS she worked for him, advising her to take a week off and that she would not get sick pay to "shag her boyfriend for a week" and that he was not "natwest".
 - Whatsapp exchange between O My Chai manager about dates the claimant would work in December 2021.

9. The respondent provided no evidence regarding the claim against them and did not attend the hearing to provide any oral evidence. The claimant in oral evidence provided the following, in addition to the information they provided in their ET1, which they adopted as part of the evidence at the hearing:
 - 9.1 The sum on her ET1 of £1,512 is based on if she worked 42 hours per week for £9.00 per hour but she did vary this and that is why the wage slip for 5 December 2021 is higher.
 - 9.2 The claimant explained why despite her wage slip on 8 December 2021 the respondent only paid her £519 in wages under the company name Ministry of Chai, she stated that he had said he does not have enough in his business account to pay her in full and paid the remainder of the net pay in cash. This was a regular occurrence.
 - 9.3 That she had asked him to pay her the full wages into her account but that he said this would cause further delay as he would have to put money into that account first, she could not do this as she had bills to pay.
 - 9.4 She does not know why he would not have enough in his business account to pay her full wages, but things did not seem right at the business.
 - 9.5 It was the claimant's belief no-one had employment contracts and that she asked for one after she was offered the job, but never received one.

Fact Findings

10. The Tribunal found the following in relation to each issue;
 - (a) Did the respondent make unauthorised deductions by withholding wages after the claimant left their employment?
 11. The claimant submitted two wage slips from the respondent and whatsapp message exchanges about hours worked and dates, it is clear despite not having an employment contract she was an employee of the respondent.
 12. Of note is that there is no payslip or documentation up until 3 January 2022 when the claimant left the employment of the respondent of what pay she was entitled to. However, there are whatsapp messages on 30 December 2021 when the respondent asks the claimant how many hours she has worked and then on the 3 January 2022 confirming she worked the full day, and it was her last day.
 13. Further to this the claimant has produced her bank statements which the respondent used to pay part of her wages every month, but there have been no payments after the 8 December 2021 by the respondent.
 14. Given the evidence that has been provided to the Tribunal the Tribunal finds that there have been unauthorised deductions by the respondent by failing to pay the respondent her wages from 6 December 2021 – 3 January 2022.
 - (b) If yes, how much wages does the respondent owe by the claimant?
 15. Based on the payslips the claimant submitted to the Tribunal it is accepted that the respondent paid the claimant £9.00 per hour and that it is clear her wages would vary depending on the number of hours worked.
 16. The Tribunal can see from whatsapp messages on the 30 December 2021 the claimant informed the respondent, when he asked, that she had worked 119 hours and it was confirmed in a message from the respondent she worked 3 January 2022 which was her last day. The additional day on top of the 119 hours would be 126 hours. Further to this on 12 January 2022 the claimant informed the respondent she has worked 126 hours and owed payment.
 17. Given the claimant's consistency as to the number of hours she worked and the evidence she has produced from December 2021, it is clear she worked 126 hours for that period. The Tribunal finds that the respondent owes the claimant £1,134 gross pay based on 126 hours multiplied by £9.00 per hour.

- (c) Was the claimant provided with a written statement of employment particulars (employment contract)? If not, should the Tribunal award additional compensation of 2 or 4 weeks' pay under section 38 Employment Act 2002?
18. The Tribunal accepts the evidence of the claimant that she was not provided with an employment contract, she was open and honest in her evidence at the hearing. The respondent in contrast has not engaged with proceedings at all and failed to produce an employment contract, if there was one.
19. The respondent was obligated to provide such a contract and in failing to provide one I find compensation of 2 weeks of wages should be awarded to the claimant. I do not award the full 4 weeks given the size of the business and the length of time the claimant was employed by the respondent.

The Law

Unlawful Deductions of Wages and Financial Loss

20. Section 13(1) of the Employment Rights Act 1996 provides that an employer shall not make a deduction from wages of a worker employed by him unless the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract or the worker has previously signified in writing his agreement or consent to the making of the deduction. Section 27 of the same Act defines the meaning of wages which includes holiday pay.
21. An employee has a right to complain to an Employment Tribunal of an unlawful deduction from wages pursuant to Section 23 of the Employment Rights Act 1996.
22. A claim about an unauthorised deduction from wages must be presented to an employment tribunal within 3 months beginning with the date of payment of the wages from which the deduction was made, with an extension for early conciliation if notification was made to ACAS within the primary time limit, unless it was not.
23. Where a Tribunal makes a declaration that there has been an unauthorised deduction from wages, it may order the employer to pay to the worker, in addition to the amount deducted, such amount as the Tribunal considers appropriate in all the circumstances to compensate the worker for any financial

loss sustained by him which is attributable to the unlawful deduction: section 24(2) ERA

Employment Judge Hena

4 August 2022

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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